IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4703 of 1999

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JADAV NAROTTAMBHAI RAMJIBHAI - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR MEHUL SHARAD SHAH for Petitioner(s) : 1,
NONE for Respondent Nos.1,3 & 4 though served.
MR HS MUNSHAW for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 16/04/2007

ORAL JUDGMENT

1. Mr.Mehul S. Shah, learned counsel for the petitioner and Mr.H.S. Munshaw, learned counsel for the respondent Nos.2. None for the respondent Nos.1, 3 and 4 though served.

2. By this writ application, petitioner seeks to challenge order dtd.18/7/1996 passed by the respondent NO.2 District Panchayat in Appeal No.34 of 1995 and order dtd.5/5/1999 passed by the Deputy Secretary (Panchayat), rejecting the Revision No.Land/3296/Revision Application-318.

3. Facts necessary for disposal of the present writ application are that the petitioner had made an application to Sundhiya Gram Panchayat - respondent No.3 to grant him permission to reconstruct his house which had earlier fallen. The Panchayat vide its Resolution NO.95 dtd.14/9/1994 (Annexure-A) granted the permission with condition that the petitioner would not be entitled to open any door on the Northern side of the plot. This grant of permission and condition not to open door on the Northern side, was not challenged by the petitioner either by filing an appeal or in any other competent proceedings. The said permission became final between the Panchayat and the petitioner.

4. It appears that the Panchayat, anticipating a foul-play, filed Regular Civil Suit No.84 of 1994 seeking an

injunction against the present petitioner injuncting him from opening door on the Northern side of his plot. However, an application seeking ad-interim injunction / interim injunction was rejected on 19/8/1995. That order also became final as the same was not challenged.

5. Vishnubhai Shankerbhai Patel – respondent No.4, being aggrieved by the grant of permission in favour of the petitioner, had filed above referred Appeal No.34 of 1995 which came to be allowed by order dtd.18/7/1996. In the said order, the District Panchayat observed that permission dtd.14/9/1994 be observed by all concerned and Disetrict Panchayat further observed that the order dtd.30/10/1995 shall continue to be operative. This order came tobe challenged by the petitioner before the Secretary, Panchayat in Revision which was dismissed, therefore, the petitioner is before this Court.

6. It is to be noted that Regular Civil Suit No.84 of 1994 was finally disposed of on 15/1/1998 in view of the compromise entered into between the present petitioner and respondent No.3.

7. Mr.Shah, learned counsel for the petitioner submits that as the appeal filed by the respondent No.4 was barred by limitation and as he had no locus to challenge the permission accorded by the Gram Panchayat – respondent No.3 on 14/9/1994, the Appellate Authority i.e. Panchayat Appeal Committee should not have interfered in the matter. His further submission is that the order passed by the Secretary in his revisional jurisdiction is also illegal.

8. Mr.Munshaw, learned counsel for the respondent No.2 submits that the District Panchayat Appeal Committee had simply held that the conditions contained in the order of permission should be observed and if such directions are issued, there was nothing wrong. His submission is that every higher authority has jurisdiction to issue a direction that the sub-ordinate authority / sub-ordinate court should act within their jurisdiction and should observe the resolutions passed by them.

9. After going through the order passed by the Appellate Committee, I am of the opinion that the Appellate Committee was not wrong in issuing directions or making

observations that the permission granted on 14/9/1994 under Resolution No.95 should be observed. Such order even otherwise would be legal and valid, because present petitioner never challenged conditional permission dtd.14/9/1994 before any authority or any Court, such conditions were binding between the parties.

10. Once the conditions were binding between the parties and the appellate authority has issued direction that the condition should be strictly adhered to, then, the Panchayat so also the present petitioner could not have entered into a compromise before the Civil Court changing the very resolution under which the permission was granted on 14/9/1994. Be that as it may. The order dtd.15/1/1998 recording compromise would not bind the respondent No.2 – Appeal Committee nor respondent NO.4 – Objector, because they were not parties before the Civil Court. The revisional authority has dismissed the revision petition observing that the conditions were binding between the parties so long as the resolution dtd.14/9/1994 was not set aside or challenged. If the said resolution dtd.14/9/1994 has been confirmed by the District Panchayat Appeal Committee, then the Panchayat

had no right or authority to recall that resolution, they could not relax the condition because, such resolution-cum-permission had seal of correctness from the appellate forum.

11.It is also to be noted that prior to 15/1/1998, the District Panchayat Appellate Committee had already confirmed the permission dtd.14/5/1994 but the fact was not brought to the notice of the Civil Court, this was an illegal act on the part of the petitioner and the Panchayat i.e. respondent No.3.

12.It is also not disputed before me that much before the compromise was arrived at between the parties, the petitioner had already opened the door on the Northern side of his plot. The submission of Mr.Shah is that as the Civil Court did not grant injunction and as there was no order against the interest of the petitioner, he could open the door on the Northern side.

13.I am surprised to hear the arguments. The permission dtd.14/9/1994 allowed the permission to open the door on the Southern side, how can one argue on the face of

permission that as no order restrained him from opening door on the Northern side, the petitioner was entitled to open the door on the Northern side. This act on the part of the petitioner clearly undermines the authority of Panchayat so also the District Panchayat Appeal Committee. The manner in which the petitioner has played games at all levels would simply show that he has no respect either for the resolution made by the Panchayat or for the Courts. It is apparent from his conduct that particular facts were not brought to the notice of the Civil Court.

14. The order passed by the Civil Court would certainly not overreach the order passed by the District Panchayat Appeal Committee and in the opinion of this Court, the District Panchayat Appeal Committee did not commit any wrong in asking the parties to observe conditional permission dtd.14/9/1994. The revisional authority also did not commit any wrong in rejecting the revision petition.

15. The petition deserves to and is accordingly dismissed. If the petitioner does not close Northern side door within 10

(ten) days from today, the District Panchayat Appeal Committee shall be obliged to take appropriate action for execution of its order dtd.18/7/1996, where-under the District Panchayat Appeal Committee has observed that the conditions incorporated in the order of permission dtd.14/9/1994 should be strictly adhered to. Rule is discharged No costs.

(R.S. GARG, J.)

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